

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN R. GARITY,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

CASE NO. C04-5554RJB

ORDER

This matter comes before the Court, on the Report and Recommendation (Dkt. 15) of Judge Karen L. Strombom, United States Magistrate Judge. The Court has considered the Report and Recommendation (Dkt. 15), Plaintiff's Objections (Dkt. 16), Defendant's Response to Plaintiff's Objections to Report and Recommendation (Dkt. 17) and the file herein.

The facts are thoroughly related in the Report and Recommendation and will not be repeated here. This opinion will now address Plaintiff's objections to the Report and Recommendation. Plaintiff objects to Judge Strombom's finding regarding the Administrative Law Judge's ("ALJ") treatment of Dr. Newell-Eggert's June 3, 2002 physical evaluation form. Dkt. 16.

In the form, Dr. Newell-Eggert opines that the exertional work level Plaintiff can perform is sedentary (defined in the form as able "to lift 10 pounds maximum and frequently lift and/or carry such articles as dockets, ledgers, and small tools") to severely limited (defined in the form as "unable to lift at least 2 pounds or unable to stand and/or walk"). Tr. 366. In response to the question "[a]re there any

1 indications of limitation on agility, mobility, or flexibility (e.g. Range of Motion (ROM) studies)? If yes,
2 please describe.” Dr. Newell-Eggert responded “currently right elbow.” *Id.*

3 The ALJ’s decision states “the undersigned has also considered the various medical opinions of
4 record, including the opinions of the claimant’s treating physicians. . . . In this case, the claimant sought
5 medical care from many physicians and their opinions vary considerably.” Tr. 27. In regard to Dr. Newell-
6 Eggert the ALJ noted “Dr. Eggert, specializing in rehabilitation medicine, completed one or two forms,
7 with little information other than noting sedentary limitations.” *Id.*

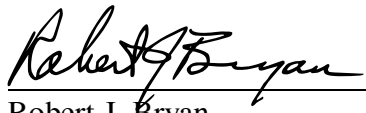
8 The ALJ had specific, legitimate reasons for rejecting Dr. Newell-Eggert’s opinion: 1) conflicts
9 between her findings and the findings of other treating physicians and 2) that her opinion was “brief,
10 conclusory and inadequately supported by clinical findings.” *See Reddick v. Chater*, 157 F.3d 715, 722
11 (9th Cir. 1998)(noting the ALJ is responsible for resolving ambiguities and conflicts in the medical
12 evidence); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)(noting the ALJ need not accept the
13 opinion of a treating physician if that opinion is “brief, conclusory and inadequately supported by clinical
14 findings”). The first, conflicts between her opinion and the opinions of other treating doctors, is supported
15 by the ALJ’s findings regarding Dr. Stirling, Plaintiff’s primary care physician. The ALJ noted Dr. Stirling
16 found “claimant’s right elbow problem was at most a mild impairment” and that Dr. Stirling opined
17 Plaintiff’s limitations ranged from sedentary to light. *Id.* The ALJ states secondly, that Dr. Newell-Eggert
18 completed forms “with little information other than noting sedentary limitations.” Tr. 27. This will be
19 construed as the ALJ’s finding Dr. Newell-Eggert’s opinion to be a “brief, conclusory opinion inadequately
20 supported by clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). These are
21 specific legitimate reasons, supported by substantial evidence in the record.

22 Plaintiff argues that “the ALJ incorrectly implied that the record only contained forms from Dr.
23 Newell-Eggert justifying rejection of those opinions, when the record included her evaluation notes in
24 addition to the forms she completed for DSHS.” Dkt. 16, at 4. However, Plaintiff fails to point to any
25 objective medical evidence in those evaluation notes which would support a finding of disability. Review
26 of Dr. Newell-Eggert’s notes indicates that there is none.

1 Therefore, it is hereby ORDERED that:

- 2 (1) The Court **ADOPTS** the Report and Recommendation;
- 3 (2) The administrative decision is **AFFIRMED**; and
- 4 (3) The Clerk is directed to send copies of this Order to plaintiff's counsel, defendant's counsel
- 5 and Magistrate Judge Karen L. Strombom.

6 DATED this 25th day of July, 2005.

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8 Robert J. Bryan
9 United States District Judge

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